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DRAFT STATUTORY INSTRUMENTS

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**2010 No.**

**The National Employment Savings Trust Order 2010**

**PART 3**

**Functions of the Trustee**

**Protection**

**13.**—(1) Subject to paragraph (3), the Trustee and the members and staff of the corporation shall not be liable for any act or omission in connection with the administration or management of the Scheme except—

- (a) an act or omission which amounts to a breach of trust and arises from its or their own wilful act or omission, fraud or dishonesty; or
- (b) where the liability is a liability that cannot be excluded or restricted, by virtue of—
  - (i) in Great Britain, section 33 of the Pensions Act 1995; or
  - (ii) in Northern Ireland, Article 33 of the Pensions (Northern Ireland) Order 1995.

(2) Without prejudice to the generality of paragraph (1), the reference in paragraph (1) to liability for any act or omission in connection with the administration or management of the Scheme includes a reference to liability for any loss, however caused, occasioned to a member of the Scheme by—

- (a) the arrangement by the Trustee of investment funds under article 29(2); or
- (b) the member's choice to direct assets of the Scheme attributable to their pension account to any particular investment fund.

(3) In so far as paragraph (1) would exclude liability for the acts or defaults of a fund manager in the exercise of a discretion delegated to such a person under—

- (a) in Great Britain, section 34(5)(b) of the Pensions Act 1995<sup>(1)</sup>; or
- (b) in Northern Ireland, Article 34(5)(b) of the Pensions (Northern Ireland) Order 1995<sup>(2)</sup>,

liability for such acts or defaults is only excluded provided that the steps set out in the provision specified in paragraph (4) have been taken by the Trustee.

(4) The specified provision is—

- (a) in Great Britain, section 34(6) of the Pensions Act 1995; and
- (b) in Northern Ireland, Article 34(6) of the Pensions (Northern Ireland) Order 1995.

(5) The Trustee may in accordance with paragraph (6) indemnify itself or the members or staff of the corporation against any losses, costs and damages it or they may incur in connection with the administration or management of the Scheme except for losses, costs or damages arising from—

- (a) an act or omission which amounts to a breach of trust and arises from its or their own wilful act or omission, fraud or dishonesty;

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(1) Section 34(5)(b) was amended by [S.I. 2001/3649](#), article 139(1) and (3).

(2) Article 34(5)(b) was amended by [S.I. 2001/3649](#), article 150(1) and (3).

- (b) a liability which cannot be excluded or restricted, by virtue of—
  - (i) in Great Britain, section 33 of the Pensions Act 1995; or
  - (ii) in Northern Ireland, Article 33 of the Pensions (Northern Ireland) Order 1995; or
- (c) a liability to pay a fine or penalty—
  - (i) in Great Britain, as described in section 256(1) of the Pensions Act 2004; or
  - (ii) in Northern Ireland, as described in Article 233(1) of the Pensions (Northern Ireland) Order 2005(3).
- (6) The Trustee may insure—
  - (a) the Scheme against any loss caused by itself, the members or staff of the corporation, or its agents; or
  - (b) itself, the members or staff of the corporation against any losses, costs or damages arising from a liability in connection with the administration or management of the Scheme except for a liability—
    - (i) which arises from an act or omission which amounts to a breach of trust and arises from its or their own wilful act or omission, fraud or dishonesty;
    - (ii) that cannot be excluded or restricted, by virtue of section 33 of the Pensions Act 1995 (in relation to Great Britain) or Article 33 of the Pensions (Northern Ireland) Order 1995 (in relation to Northern Ireland); or
    - (iii) to pay a fine or penalty as described in section 256(1) of the Pensions Act 2004 (in relation to Great Britain) or Article 233(1) of the Pensions (Northern Ireland) Order 2005 (in relation to Northern Ireland).
- (7) Where the Trustee decides to indemnify itself, or the members or staff of the corporation, under paragraph (5), the losses, costs or damages in question shall be regarded for the purposes of article 27 as part of the general costs of administration and management of the Scheme.
- (8) Where the Trustee decides to take out insurance under paragraph (6), the costs of taking out the insurance shall be regarded, for the purposes of article 27, as part of the general costs of administration and management of the Scheme.